***United States Court of Appeals***

***for the Second Circuit***


# APPELLEE'S BRIEF

# 75-7231

# United States Court of Appeals

**For the Second Circuit**


EINAR A. HELSING,

*Plaintiff-Appellee,*

*against*

STAMFORD MOTORS, INC.,

*Defendant-Appellant.*

**Appeal from the United States District Court for the Southern District of New York**

## BRIEF FOR PLAINTIFF-APPELLEE

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Docket No. 75-7231

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# BRIEF FOR PLAINTIFF-APPELLEE

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## Preliminary Statement

Plaintiff-Appellee Einar A. Helsing ("Helsing") submits this brief in opposition to the appeal by Defendant-Appellant Stamford Motors, Inc. ("Stamford") from a judgment

(138a)* filed on March 24, 1975 in the United States District Court for the Southern District of New York and signed by the Honorable Lee P. Gagliardi awarding Helsing recovery of $31,378.50 plus interest. The judgment was entered pursuant to Judge Gagliardi's memorandum decision (123a) granting Helsing's motion for summary judgment and denying Stamford's cross-motion for summary judgment.

## Issue Presented

Was the district court correct in granting summary judgment to Helsing based upon the unambiguous terms of an agreement between Helsing and Stamford where the material facts were undisputed?

## Statement of the Case

Helsing commenced this action to recover the amount due under an agreement with Stamford dated December 19, 1969 (hereinafter referred to as "the Agreement") which provided in paragraph 3 that if Stamford sold a certain parcel of real property located on South Street in Stamford, Connecticut (hereinafter referred to as "the South Street Property")

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* Numbers followed by "a" refer to pages in the Joint Appendix.

within three years of the date of the Agreement, Stamford would pay Helsing an amount equal to twenty-five percent of the amount by which the net selling price of the South Street Property exceeded $700,000. If the net selling price of the South Street Property was less than $700,000, Helsing agreed to pay Stamford twenty-five percent of the difference. On January 26, 1972, -- i.e., within three years of the date of the Agreement -- Stamford sold the South Street Property.

In its answer to the complaint Stamford asserted a counterclaim alleging that Helsing was indebted to it under the latter provisions of paragraph 3 of the Agreement. The matrix of the controversy arising from the pleadings is whether Stamford incurred an expense for federal and state income taxes deductible from the sale price of the South Street Property for the purpose of calculating the "net selling price" of the South Street Property as defined in the Agreement.

In the district court Helsing moved and Stamford cross-moved for summary judgment under Fed.R.Civ.P. 56. Helsing sought recovery of $31,378.50 on its motion based upon the calculation set forth in the moving affidavit (13a) and restated below; Stamford sought recovery of $34,783 on its cross-motion based upon a calculation set forth in one of its moving affidavits (88a). Both calculations were premised on a sale price of $830,000 for the South Street Property.

In opposition to Helsing's motion and in support of its cross-motion, Stamford's sole contention was that federal and state income taxes it alleges would have been paid if a gain on the sale of the South Street Property had been recognized for tax purposes are deductible from the sale price of the South Street Property for the purpose of calculating the "net selling price" under the Agreement. In fact, no taxes were paid in connection with Stamford's sale of the South Street Property because its conveyance to the purchasers was structured as a non-taxable exchange under 26 U.S.C. §1031.* Thus, the sole legal issue presented to the district court was whether, under paragraph 3 of the Agreement, "expenses incurred" by Stamford attributable to the South Street Property sale included the hypothetical federal and state income taxes postulated by Stamford.

The district court held that since Stamford neither paid nor became obligated to pay taxes by virtue of the sale of the South Street Property, a deduction for taxes in calculating "net selling price" would be improper. (126a) Stam-

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* The South Street Property plus $212,138 in cash was used by Stamford to purchase a parcel of real property located on Magee Avenue in Stamford, Connecticut (hereinafter referred to as "the Magee Avenue Property") for $1,042,130. See purchase agreement dated June 26, 1972, ¶2 (42a).

ford's attempt to expand the unambiguous terms of the Agreement drafted by its counsel,* by stretching the phrase "expense incurred" to include a tax neither paid, currently due nor likely to become due was rejected by the district court.

## Statement of Facts

### A. Helsing's Claim and the Sale of the South Street Property.

As noted above, Helsing's claim in this case is based upon the terms of the Agreement dated December 19, 1969 (15a) between Helsing and Stamford whereby Helsing sold his stock interest in Stamford to Stamford. As part of the Agreement, Stamford agreed, in paragraph 3, that if it sold the South Street Property within three years of the date of the Agreement, December 19, 1969 and the net selling price as defined in the Agreement, exceeded $700,000, then it would pay Helsing a sum equal to twenty-five percent of the difference between the net selling price and $700,000. Conversely, if the net selling price of the South Street Property was less than $700,000, Helsing would pay Stamford twenty-five percent of the difference.

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* Vest Affidavit, ¶3 (95a).

On or about June 26, 1972 -- i.e., within the three year period provided in paragraph 3 of the Agreement -- Stamford sold the South Street Property and received consideration therefor in the gross amount of $830,000 pursuant to a written agreement (19a) between Stamford as "seller" and Cleante A. Pimpinella and Ralph M. Grosso as "purchaser." Paragraph 3 of the latter agreement provides in pertinent part: "The purchase price is EIGHT HUNDRED THIRTY THOUSAND DOLLARS ..." (19a) Further confirmation of the sale price received by Stamford for the South Street Property is found in the closing statement (61a) prepared by Stamford's attorneys.

Grasping at straws, on this appeal Stamford has endeavored to manufacture an issue concerning the characterization of the South Street Property sale by assuming a position in direct conflict with its position in the district court on Helsing's motion and its cross-motion.* Thus, on page 6 of its brief Stamford states: "defendant claims the transaction in question was not a 'sale' for the purposes of the Agreement ..." Page 7 of Stamford's memorandum of

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* Stamford's reversal of positions appeared for the first time in the memorandum of law submitted in support of its motion for reargument (133a). In a memorandum decision and order dated March 4, 1975, Judge Gagliardi granted Stamford's motion for reargument and adhered to his original decision.

law submitted in support of its cross-motion and in opposition to Helsing's motion for summary judgment, however, is wholly inconsistent with its present assertion:

> Both Helsing and Stamford agree that the exchange of the South Street Property must be treated as a sale of the South Street Property for $830,000 for accounting purposes and for the purposes of the Agreement. (Emphasis added.)

Again at oral argument before Judge Gagliardi, George G. Vest of Stamford's counsel unequivocally reiterated the position that the June 26, 1972 transaction was a sale for the purposes of paragraph 3 of the Agreement. Finally, Judge Gagliardi's decision makes specific mention of the fact that no dispute regarding the characterization of June 26, 1972 transaction was presented (124a): "The parties agree that the June 26 transaction constituted a sale for the purposes of paragraph 3 of the agreement." (Emphasis added.)

B. Calculation of "Net Selling Price"

In paragraph 3 of the Agreement, "net selling price" is defined to mean (17a),

> the selling price of the [South Street Property] computed by deducting all expenses incurred by [Stamford] attributable to the sale including but not limited to commissions, legal fees, transfer taxes and all federal, state or local income taxes payable by [Stamford], if any. (Emphasis added.)

It is further provided that amounts due under paragraph 3 "shall be paid 90 days after the date the [South Street Property] is sold." (17a)

Stamford admits in paragraphs 1(a), 1(f), 1(g) and 1(h) of its answers (65-66a) to Helsing's interrogatories (63-64a) that no commissions, local taxes or other expenses, apart from those discussed below were paid in connection with the sale of the South Street Property.

Paragraph 1(c) of Stamford's answers to Helsing's interrogatories indicates that a check for a conveyance tax in the amount of $913 was issued to the Town Clerk, City of Stamford. Under the Agreement this is a proper deduction for the purpose of computing "net selling price" and the final judgment gave Stamford credit for such payment.

In paragraph 1(b) of its answers to Helsing's interrogatories Stamford states that of the total fees paid to its attorneys for the period March 1, 1971 through March 31, 1973, "Defendant on information and belief believes $5,000 of this amount is reasonably attributed to the transfer of the South Street Property." Nevertheless, a bill from Stamford's attorneys for the period April 12, 1972 through August 21, 1972 (67-68a) clearly indicates that the legal fees paid in connection with the sale of the South Street

Property as well as several unrelated matters totaled only $3,573. In the Fleischer Affidavit (11a), submitted in support of Helsing's motion for summary judgment, Stamford was invited to indicate how much of the $3,573 was attributable to unrelated matters on the Cummings & Lockwood statement. But, Stamford has never attempted in its motion papers, at oral argument to the district court or this appeal to explain why "on information and belief [it] believes" that $5,000 of fees are attributable to the South Street Property sale when the only statement pertaining to the sale received from its attorneys clearly shows that an amount less than $3,573 was paid.

On January 21, 1975 Helsing served Stamford with notice of settlement of the judgment ultimately signed by Judge Gagliardi on March 24, 1975. The notice of settlement and proposed judgment served upon Stamford's counsel were accompanied with a letter dated January 21, 1975 which read as follows:

> Re: Helsing v. Stamford Motors
>
> Dear Mr. Reilly:
>
> Please find enclosed herewith a notice of settlement of judgment in connection with the above referenced action. Apart from transfer taxes of $913, $3573 representing legal fees has been deducted from the selling price of $830,000 for the purpose of calculating "net

selling price" as defined in the agreement of December 19, 1969.

Although the Cummings & Lockwood bill dated September 11, 1972 indicates that services unrelated to the sale of the South Street Property are included in the $3573 figure, that figure has been adopted in an attempt to avoid proceedings before a Magistrate. Interest has been provided from November 17, 1972; i.e., ninety days after the closing date of August 16, 1972.

Sincerely yours,

/s/ David Fleischer

During the two month period between receipt of Helsing's proposed judgment and the signing of that judgment Stamford neither responded to the foregoing letter nor submitted a counter proposed judgment. Under the foregoing circumstances Stamford's remarkable assertion on page 9 of its brief that "manifest error" was committed by the district court in adopting the $3573 figure for counsel fees is at best disingenously irrational.

The only remaining items to be considered for the purpose of calculating the "net selling price" of the South Street Property are federal and state income taxes. Neither Stamford's U.S. Corporation Income Tax Return for the year ended December 31, 1972 (69-79a), its State of Connecticut Corporate Busines Tax Return for the year ended December 31, 1972 (81-88a) nor its internal financial statements for the

year ended December 31, 1972 (80a)* reflect a payment or accrued liability for federal or state income taxes. Indeed, Stamford concedes that it has neither paid nor become liable for the payment of such taxes. Stamford's brief, p. 12.

In summary, the "net selling price" under paragraph 3 of the Agreement is properly calculated as follows:

| | | |
|---|---|---|
| Selling Price | | $830,000 |
| Less: | Legal Fees | (3,573) |
| | Transfer Tax | ( 913) |
| Net Selling Price | | $825,514 |

Concomitantly, the amount due Helsing under the Agreement and the amount of the judgment entered in the district court -- twenty-five percent of the difference between the "net selling price" ($825,514) and $700,000 -- is $31,378.50.

## Argument

### POINT I

### STAMFORD IS ESTOPPED FROM ASSERTING THAT THE SOUTH STREET PROPERTY TRANSACTION WAS NOT A SALE UNDER THE AGREEMENT AND THAT THE AGREEMENT IS AMBIGUOUS

As noted above, in its memorandum of law in

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* A more legible form of Stamford's balance sheet for 1972 is appended to Helsing's reply memorandum in support of the motion for summary judgment.

opposition to Helsing's motion for summary judgment and in support of its cross-motion for summary judgment and at oral argument on these motions, Stamford unequivocally took the position that the South Street Property transaction was a sale* for $830,000. Indeed, if no sale had occurred, Stamford could hardly have cross-moved for a positive money judgment from Helsing on its counterclaim based on paragraph 3 of the Agreement since a sale is a sine qua non for the application of the provisions of paragraph 3.

A volte-face almost identical to that attempted by Stamford in the instant case was attempted by plaintiff in National Utility Service, Inc. v. Whirlpool Corp., 325 F.2d 779 (2d Cir. 1963). In the district court, defendant's motion for a directed verdict was granted and a judgment was entered dismissing plaintiff's complaint alleging two claims for breach of contract. On appeal, plaintiff contended that the district court had usurped the functions of the jury in directing a verdict. Nevertheless, before trial plaintiff

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* Of course, the agreement of June 26, 1972 (19a) speaks for itself. The substance of that agreement clearly spells out a sale. Even if cash had not been involved in this transaction, it must be deemed a sale since the values of the Magee Avenue and South Street Properties were measured in dollar terms. See, 30 Am.Jur.2d, Exchange of Property §3 (1967).

had urged the district court to decide, as a matter of law, the effect of a certain typed insertion in the contract sued upon. In its pretrial order, the district court judge adopted plaintiff's precise language. On appeal, plaintiff contended that the typed insertion was ambiguous and, therefore, was an issue for the jury. Based upon plaintiff's position in the district court, embodied in the pretrial order, the appellate court held that "plaintiff cannot now successfully contend that the typed insertion is ambiguous." Id. at 780 n.3. See also, Lummus Co. v. Commonwealth Oil Refining Co., 280 F.2d 915, 928 (1st Cir. 1960); Diaz v. Southeastern Drilling Co., 324 F.Supp. 1, 7 (N.D. Texas 1969), aff'd 449 F.2d 258 (5th Cir. 1971).

Under Fed.R.Civ.P. 56 a motion for summary judgment must be based on the assertion that there is no genuine issue of fact to be tried. In its cross-motion, Stamford, both explicitly and implicitly asserted that a sale of the South Street Property for $830,000 had occurred for the purpose of paragraph 3 of the Agreement and that the provisions of paragraph 3 were unambiguous and accurately expressed the intention of the parties. The only question presented to the district court was a legal one, viz.: Did Stamford incur an expense

for federal and state income taxes deductible in calculating the "net selling price" of the South Street Property? The latter issue, therefore, is the only one properly before this court.

## POINT II

### THE DISTRICT COURT WAS CORRECT IN GRANTING HELSING'S MOTION FOR SUMMARY JUDGMENT

In paragraph 3 of the Agreement, "net selling price" is defined to mean,

> the selling price of the real estate [i.e., the South Street Property] computed by deducting all expenses incurred by the Company attributable to the sale including but not limited to commissions, legal fees, transfer taxes and all federal, state or local income taxes payable by the Company, if any. (Emphasis added.)

Thus, in order to constitute a deduction for the purpose of calculating "net selling price," federal and state taxes, if any, must be "expenses incurred" by Stamford. Stamford's federal and state income tax returns for the fiscal year ended December 31, 1972 (69a and 81a, respectively) indicate that no taxes were paid in connection with its sale of the South Street Property on June 25, 1972 and it is conceded at page 12 of Stamford's brief that it has no current liability

for such taxes. By virtue of the structure of the sale of the South Street Property under 26 U.S.C. §1031, the sale had absolutely no tax consequences for Stamford.

The Agreement to be construed in the present case is a wholly integrated unambiguous contract. As such, "[t]he question is not what intention existed in the minds of the parties but what intention is expressed in the language used." Ginsberg v. Mascia, 149 Conn. 502, 506, 182 A.2d 4, 6 (1962). "[I]f the written contract contains all the terms, they cannot be added to, subtracted from or varied by parol evidence." Fairfield Lease Corp. v. Eastern Sportswear Co., 6 Conn. Cir. 347, 273 A.2d 300, 302 (1973).*

Where, as here, the words in an agreement can be sensibly applied to the subject matter according to their common usage -- and nothing in the Agreement at issue

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* Stamford's reliance on this case is misplaced since the court's admission of parol testimony was for the purpose of clarifying the meaning of an ambiguous term in the contract at issue, "not for the purpose of ascertaining any unexpressed intent ..." Id. As was demonstrated in Point I, supra, Stamford is estopped from asserting that the Agreement at issue here is ambiguous. It should also be noted that since Stamford's counsel drafted the Agreement, if any ambiguity in the language is present, it must be construed against Stamford. See, Ravitch v. Stollman Poultry Farms, Inc., 165 Conn. 135, 328 A.2d 711 (1973); Greenwich Contracting Co. v. Bonwit Construction Co., 156 Conn. 123, 239 A.2d 519 (1968).

suggests an alternative application -- the words used must be accorded their common meaning. Sturtevant v. Sturtevant, 146 Conn. 644, 153 A.2d 828 (1959); Ginsberg v. Coating Products, Inc., 152 Conn. 592, 210 A.2d 667 (1965); Internatio - Rotterdam, Inc. v. Herrick Co., 103 F.Supp. 466 (D. Conn. 1951).

The ordinary meaning of the word "incurred" contemplates the happening of an occurrence or an event. In Webster's Third New International Dictionary (Unabridged) (1966) "incur" is defined as follows: "to meet or fall in with (as an inconvenience): become liable or subject to: bring down upon oneself ..." It is clear that Stamford has not met with or become liable for any federal or state taxes attributable to the sale of the South Street Property.

For tax accounting purposes, the use of the word incur with respect to the fixing of a deductible expense by the taxpayer has a similar meaning. In the case of a cash basis taxpayer, "[e]xpenditures are to be deducted for the taxable year in which actually made." Treas. Reg. §1.446-1(c)(i). For an accural basis taxpayer, "deductions are allowable for the taxable year in which all the events have occurred which establish the fact of liability giving rise to such deduction and the amount thereof can be determined

with reasonable accuracy." Treas. Reg. §1.446-1(c)(ii).

More specifically, state and local income taxes, which are deductible for federal income tax purposes, are allowable only "for the taxable year within which paid or accrued." Treas. Reg. §1.164-1(a). It is clear that Stamford has not incurred federal and state income taxes on the sale of the South Street Property within either the ordinary or the tax accounting meaning of the word "incurred." Stamford has neither met with nor become liable for such taxes, nor have taxes actually been paid by Stamford, nor have all the events occurred that would fix Stamford's liability for such taxes.

Stamford's motion papers in the district court and its brief in this court devote considerable space to a description of what it contends is the "proper accounting treatment" of the South Street Property sale.* This exposition, however, merely demonstrates the weakness of its position. Ostensibly, the rationale for Stamford's account-

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* Stamford's exposition of accounting procedure must be regarded as mere sophistry since the procedures described as "proper" were not employed in Stamford's own financial statements. Stamford's proferred "deferred tax liability" is not reflected on its balance sheet, nor does Stamford's income statement reflect an entry concerning the South Street Property sale.

ing analysis is to support its characterization of the expense it would deduct from the selling price of the South Street Property as a "deferred" tax liability. A deferred tax liability, however, "is not a liability in any legal sense." Fiflis and Kripke, Accounting for Busines Lawyers 485 (1971). Moreover, even if it is assumed that Stamford could produce a balance sheet reflecting a "deferred tax liability" -- which it cannot -- it is still unable to say it incurred an expense.

To be sure tax accounting and financial accounting are not the same, but the niceties of accounting are immaterial because the Agreement at issue is not concerned with accounting techniques. The issue is whether Stamford "incurred" taxes attributable to the sale of the South Street Property within the meaning of paragraph 3 of the Agreement. It is the word "incurred" unburdened by an arcane overlay from the interaction of reporting techniques, whose ordinary meaning must be determined by the court.

Stamford's adjusted tax basis in the South Street Property on the date of sale would have significance only if the Magee Avenue Property, with which it was in part purchased, was sold in a taxable transaction, for an amount greater than Stamford's adjusted tax basis for the Magee Avenue Property on the day of its sale. Of course, in the event of a sale by Stamford of the Magee Avenue Property,

any tax paid by Stamford would be attributable to that sale, not the sale of the South Street Property. Under paragraph 3 of the Agreement deductions from "net selling price" must be for an expense incurred attributable to the sale of the South Street Property, not the sale of some other property.

Furthermore, Stamford's liability for taxes on the Magee Avenue Property is entirely hypothetical; it is possible that no tax will ever be paid. For example:

1. The Magee Avenue Property may never be sold. If it is sold, the price obtained by Stamford may be less than its adjusted tax basis on the date of sale.

2. The realization of a recognized gain on a sale of the Magee Avenue Property might occur at a time when Stamford has available losses against which the gain might be offset and which, if not offset against that gain, would be unavailable as an offset for other gains or income of Stamford.

3. Stamford might sell the Magee Avenue Property in the same manner as it sold the South Street Property, in which case no gain on the sale would be recognized under 26 U.S.C. §1031.

4. Stamford's disposition of the Magee Avenue Property might occur as a result of its condemnation or other involuntary conversion, in which case taxes could be avoided under 26 U.S.C. §1033.

5. No gain to Stamford on the disposition of the Magee Avenue Property would be recognized if it disposed of the property pursuant to a plan of liquidation adopted under 26 U.S.C. §337.

6. If the Magee Avenue Property was disposed of in the course of a reorganization under 26 U.S.C. §368(a) no gain to Stamford would be recognized by reason of 26 U.S.C. §361.

7. Stamford might distribute the Magee Avenue Property to its shareholders in a corporate distribution in which no gain would be recognized to it by reason of 26 U.S.C. §311(a).

8. The Internal Revenue Code may be amended to alter the tax rate on any gain Stamford might realize upon sale of the Magee Avenue Property.

Neither an imaginary tax on the sale of the South Street Property nor a hypothetical future tax on the sale of the Magee Avenue Property rise to the dignity of an "expense incurred" within the meaning of paragraph 3 of the Agreement.

The absurdity of Stamford's position comes into particularly sharp focus when its counterclaim and cross-motion for summary judgment are scrutinized. In effect Stamford seeks to assess against Helsing twenty-five percent of a tax it has not paid, has not become liable to pay and as demonstrated above is likely never to pay. And, adding insult to injury, Stamford charges that if Helsing is not required to pay this ghost tax, he will be receiving a windfall.

The amounts payable under that paragraph were to be paid "ninety days after the date the [South Street Property] was sold." If a real tax liability attributable to the sale

of the South Street Property existed, this period would allow ample time for the calculation of its amount, the calculation of the amount payable under paragraph 3 of the Agreement and the remittance of that amount. However, the expense for taxes proffered by Stamford in this case is real in neither a legal nor common sense; with respect to the South Street Property it is imaginary and with respect to the Magee Avenue Property it is hypothetical.

## Conclusion

The judgment of the district court should be affirmed in all respects.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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EINAR A. HELSING,

Plaintiff-Appellee,

Docket No.
75-7231

-against-

STAMFORD MOTORS, INC.,

Defendant-Appellant.

AFFIDAVIT OF SERVICE

- - - - - - - - - - - - - - - - - - - - - - - -x

STATE OF NEW YORK )
) SS.:
COUNTY OF NEW YORK )

Anne Marie Bursky, being duly sworn, deposes and says, that deponent is not a party to this action, is over the age of eighteen years and resides at 426 East 66th Street, New York,

that deponent is not a party to this action, is over the age of eighteen years and resides at 426 East 66th Street, New York, New York 10021, that on the 7th day of August, 1975, deponent served two copies of the Brief for Plaintiff-Appellee in the above entitled matter upon Cummings & Lockwood, attorneys for Defendant-Appellant Stamford Motors, Inc., at One Atlantic Street, Stamford, Connecticut 06904 by depositing same in a postpaid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Anne Marie Bursky

ANNE MARIE BURSKY

Sworn to before me this
7th day of August, 1975.

Otto L. Heuberger

OTTO L. HEUBERGER
NOTARY PUBLIC, State of New York
No. 41-1783250
Qualified in Queens County
Cert. Filed in New York County
Commission Expires March 30, 1977

Dated: _____

STATE OF NEW YORK, COUNTY OF ss.: **INDIVIDUAL VERIFICATION**

being duly sworn, deposes and says that deponent is the in the within action; that deponent has read the foregoing and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Sworn to before me, this day of 19 _____

STATE OF NEW YORK COUNTY OF ss.: **CORPORATE VERIFICATION**

being duly sworn, deposes and says that deponent is the of the corporation named in the within action; that deponent has read the foregoing and knows the contents thereof; and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true.

This verification is made by deponent because is a corporation. Deponent is an officer thereof, to-wit, its

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me, this day of 19 _____

STATE OF NEW YORK COUNTY OF ss.: **AFFIDAVIT OF SERVICE BY MAIL**

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at

That on the day of 19 deponent served the within

upon attorney(s) for in this action, at the address designated by said attorney(s) for that purpose by depositing same enclosed in a postpaid, properly addressed wrapper, in — a post office — official depository under the exclusive care and custody of the United States post office department within the State of New York.

Sworn to before me, this day of 19 _____

STATE OF NEW YORK COUNTY OF ss.: **AFFIDAVIT OF PERSONAL SERVICE**

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at

That on the day of 19 at No.

upon deponent served the within

the herein, by delivering a true copy thereof to h personally. Deponent knew the person so served to be the person mentioned and described in said papers as the therein.

Sworn to before me, this day of 19 _____

Docket No. 75-7231

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

EINAR A. HELSING,

Plaintiff-Appellee,

-against-

STAMFORD MOTORS,

Defendant-Appellant.

AFFIDAVIT OF SERVICE

BATTLE. FOWLER. LIDSTONE. JAFFIN. PIERCE & KHEEL

Attorneys for Plaintiff-Appellee
No. 280 PARK AVENUE,
BOROUGH OF MANHATTAN,
NEW YORK, N. Y. 10017
(212) 986-8330

Due and timely service of the within

is hereby admitted,

Dated at New York, 19

Attorney for

---

SIR:

Take notice that the within is a copy of

in the within action, this day duly made and entered in the office of the clerk of the

Dated New York,

Yours, etc.

BATTLE. FOWLER. LIDSTONE. JAFFIN. PIERCE & KHEEL

Attorneys for
No. 280 PARK AVENUE,
BOROUGH OF MANHATTAN,
NEW YORK, N. Y. 10017

To

_____ Esq.

Attorney for

---

SIR:

Please take notice that the proposed

of which the within

one of the Justices of this court for settlement at

on the day of 19

at o'clock in the noon

Yours, etc.

BATTLE. FOWLER. LIDSTONE. JAFFIN. PIERCE & KHEEL

Attorneys for
Office and P.O. Address
No.280 PARK AVENUE,
BOROUGH OF MANHATTAN,
NEW YORK, N. Y. 10017

To

Attorney for